

1 JOSEPH H. HUNT  
2 Assistant Attorney General  
3 SCOTT G. STEWART  
4 Deputy Assistant Attorney General  
5 WILLIAM C. PEACHEY  
6 Director  
7 Office of Immigration Litigation  
8 WILLIAM C. SILVIS  
9 Assistant Director  
10 Office of Immigration Litigation  
11 U.S. Department of Justice  
12 Box 868, Ben Franklin Station  
13 Washington, DC 20442  
14 Telephone: (202) 532-4824  
15 Fax: (202) 616-8962  
16 ADAM L. BRAVERMAN  
17 United States Attorney  
18 SAMUEL W. BETTWY  
19 Assistant U.S. Attorney  
20 California Bar No. 94918  
21 Office of the U.S. Attorney  
22 880 Front Street, Room 6293  
23 San Diego, CA 92101-8893  
24 619-546-7125  
25 619-546-7751 (fax)  
26 *Attorneys for Federal Respondents-*  
27 *Defendants*

Lee Gelernt\*  
Judy Rabinovitz\*  
Anand Balakrishnan\*  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
125 Broad St., 18th Floor  
New York, NY 10004  
T: (212) 549-2660  
F: (212) 549-2654  
*lgelernt@aclu.org*  
*jrabinovitz@aclu.org*  
*abalakrishnan@aclu.org*

Bardis Vakili (SBN 247783)  
ACLU FOUNDATION OF  
SAN DIEGO & IMPERIAL  
COUNTIES  
P.O. Box 87131  
San Diego, CA 92138-7131  
T: (619) 398-4485  
F: (619) 232-0036  
*bvakili@aclusandiego.org*

Stephen B. Kang (SBN 292280)  
Spencer E. Amdur (SBN 320069)  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
39 Drumm Street  
San Francisco, CA 94111  
T: (415) 343-1198  
F: (415) 395-0950  
*skang@aclu.org*  
*samdur@aclu.org*

*Attorneys for Petitioners-*  
*Plaintiffs*  
*\*Admitted Pro Hac Vice*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MS. L, et al.,

Case No. 18cv428 DMS MDD

### Petitioners-Plaintiffs,

## **JOINT STATUS REPORT**

VS.

U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT, et  
al.,

## Respondents-Defendants.

The Court ordered the parties to file a joint status report (“JSR”) on March 27,

2019, in anticipation of the status conference scheduled at 1:00pm PST on March 28, 2019. The parties submit this joint status report in accordance with the Court's instruction.

## I. DEFENDANTS' POSITIONS

## A. Update on Reunifications

As of March 25, 2019, Defendants have discharged 2,749 of 2,814<sup>1</sup> possible children of potential class members. *See Table 1: Reunification Update.* This is an

<sup>1</sup> Since the last JSR, ORR discovered that two separated children it previously reported as possible children of potential class members in ORR care on June 26, 2018 were in fact referred to its care in July 2018. As a result, the true count of such children was 2,814, not 2,816 as previously reported. The two miscounted children, who have both been discharged from ORR care, will be added to the count of new, post-June 26, 2018 separations reported to Plaintiffs. Notwithstanding this correction, this JSR describes updates in reference to the numbers reported on March 6, 2019.

1 increase of eight discharges reported in Table 1 since the JSR filed on March 6, 2019.

2 See ECF No. 382. Four of the eight children were discharged by being reunified with  
3 their separated parent; and the remaining four were discharged under other  
4 appropriate circumstances, such as discharges to other appropriate sponsors.  
5

6 Table 1 shows that, as of the date that the table was generated, there were five  
7 children in ORR care proceeding towards reunification or other appropriate  
8 discharge. Since the table was generated, however, one of these five children was  
9 reunified with his separated parent earlier this week.<sup>2</sup> This reunification occurred  
10 after Defendants generated the data for this report, and will be reflected in the next  
11 JSR. The current status of the four remaining children is as follows:  
12

- 13
- 14     ▪ One child has a parent who is in the United States, but who is unavailable  
15                 because the parent is in other federal, state, or local custody. Defendants  
16                 are working to appropriately discharge the child, and to identify any  
17                 possible barriers to discharge, meeting and conferring with Plaintiffs  
18                 where appropriate for resolution. The other child was reunified with his  
19                 separated parent earlier this week
  - 20     ▪ Three children have parents who departed from the United States. The  
21                 Steering Committee has not yet provided notice of parental intent  
22                 regarding reunification (or declination of reunification) for two of these  
23

27

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28<sup>2</sup> The child is reflected in Table 1 as having a parent presently in the United States.

children. For the third child, the Steering Committee has advised Defendants that it is unable to obtain the parent's preference, and regards this case as resolved for its purposes. Defendants are supporting the efforts of the Steering Committee to obtain statements of intent from the parents of the first two children. Once Defendants receive the notices from the Steering Committee, Defendants will either reunify the children or move them into the TVPRA sponsorship process, consistent with the intent of the parent.<sup>3</sup>

**Table 1: Reunification Update**

<b>Description</b>	<b>Phase 1 (Under 5)</b>	<b>Phase 2 (5 and above)</b>	<b>Total</b>
Total number of possible children of potential class members	107	2707	2814
<b>Discharged Children</b>			
Total children discharged from ORR care:	106	2643	2749
<ul style="list-style-type: none"> <li>• Children discharged by being reunified with separated parent</li> </ul>	82	2077	2159
<ul style="list-style-type: none"> <li>• Children discharged under other appropriate circumstances (these include discharges to other sponsors [such as situations where the child's separated parent is not eligible for reunification] or children that turned 18)</li> </ul>	24	566	590

<sup>3</sup> After generating this report, Defendants received notice from the Steering Committee that it will not be submitting an indication of parental preference with respect to another parent, and plans to report the case as resolved. This update will be reflected in the next JSR, and in Defendants' separate report to Plaintiffs this week.

<b><u>Children in ORR Care, Parent in Class</u></b>				
1	Children in care where the parent is not eligible for reunification or is not available for discharge at this time:	0	5	5
2	• Parent presently outside the U.S.	0	3	3
3	○ Steering Committee has advised that resolution will be delayed	0	2	2
4	○ Steering Committee could not obtain parental preference	0	1	1
5	• Parent presently inside the U.S.	0	2	2
6	○ Parent in other federal, state, or local custody	0	1	1
7	○ Parent red flag case review ongoing – safety and well being	0	0	0
<b><u>Children in ORR Care, Parent out of Class</u></b>				
8	Children in care where further review shows they were not separated from parents by DHS	1	10	11
9	Children in care where a final determination has been made they cannot be reunified because the parent is unfit or presents a danger to the child	0	16	16
10	Children in care with parent presently departed from the United States whose intent not to reunify has been confirmed by the ACLU	0	30	30
11	Children in care with parent in the United States who has indicated an intent not to reunify	0	3	3

## **B. Update on Removed Class Members**

The current reunification status of removed class members is set forth in Table 2 below. The data presented in this Table 2 reflects approximate numbers maintained by ORR as of at least March 25, 2019. These numbers are dynamic and continue to change as the reunification process moves forward.

**Table 2: Reunification of Removed Class Members**

<u>REUNIFICATION PROCESS</u>	<u>REPORTING METRIC</u>	<u>NO.</u>	<u>REPORTING PARTY</u>
<b>STARTING POPULATION</b>	Children in ORR care with parents presently departed from the U.S.	33	Defs.
<b>PROCESS 1: Identify &amp; Resolve Safety/Parentage Concerns</b>	Children with no “red flags” for safety or parentage	33	Defs.
<b>PROCESS 2: Establish Contact with Parents in Country of Origin</b>	Children with parent contact information identified	33	Defs.
	Children with no contact issues identified by plaintiff or defendant	33	Defs. & Pls.
	Children with parent contact information provided to ACLU by Government	33	Defs.
<b>PROCESS 3: Determine Parental Intention for Minor</b>	Children for whom ACLU has communicated parental intent for minor:	30	Pls.
	<ul style="list-style-type: none"> <li>• Children whose parents waived reunification</li> </ul>	30	Pls.
	<ul style="list-style-type: none"> <li>• Children whose parents chose reunification in country of origin</li> </ul>	0	Pls.
	<ul style="list-style-type: none"> <li>• Children proceeding outside the reunification plan</li> </ul>	0	Pls.
	Children for whom ACLU has not yet communicated parental intent for minor:	2	Pls.
	<ul style="list-style-type: none"> <li>• Children with voluntary departure orders awaiting execution</li> </ul>	0	Defs.
	<ul style="list-style-type: none"> <li>• Children with parental intent to waive</li> </ul>	0	Defs.

	reunification documented by ORR		
1	• Children whose parents ACLU has been in contact with for 28 or more days without intent determined	0	Pls.
2	Children whose parents steering committee could not obtain parental preference	1	PIs
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1                   **C. Update Regarding Government's Implementation of Settlement  
2                   Agreement**

3 <b>SETTLEMENT 4                   PROCESS</b>	5 <b>DESCRIPTION</b>	6 <b>NUMBER</b>
7 <b>Election Forms<sup>4</sup></b>	8                   Total number of executed 9                   election forms received 10                  by the Government	11 <b>347 (222 Parents/125 12                 Children)<sup>5</sup></b>
13	14                  • Number who elect 15                  to receive 16                  settlement 17                  procedures	18 <b>190 (122 Parents/68 19                 Children)</b>
20	21                  • Number who 22                  waive settlement 23                  procedures	24 <b>157 (100 Parents/57 25                 Children)<sup>6</sup></b>
26 <b>Interviews</b>	27                  Total number of class 28                  members who received 29                  interviews	30 <b>139<sup>7</sup></b>
31	32                  • Parents who 33                  received 34                  interviews	35 <b>73</b>
36	37                  • Children who 38                  received 39                  interviews	40 <b>66</b>
41 <b>Decisions</b>	42                  Total number of CFI/RFI 43                  decisions issued for 44                  parents by USCIS	45 <b>66<sup>8</sup></b>

18                  <sup>4</sup> The number of election forms reported here is the number received by the Government as of  
19                  March 18, 2019.

20                  <sup>5</sup> The number of children's election forms is lower than the number of parent election forms  
21                  because in many instances a parent electing settlement procedures submitted an election form on  
22                  his or her own behalf or opposing counsel e-mailed requesting settlement implementation for the  
23                  entire family, but no separate form was submitted on behalf of the child.

24                  <sup>6</sup> The number of children's waivers is lower because some parents have submitted waivers only  
25                  for themselves and some parents who have waived reunification also waived settlement procedures  
26                  and have therefore not provided a form for the child.

27                  <sup>7</sup> Some individuals could not be interviewed because of rare languages; these individuals were  
28                  placed in Section 240 proceedings.

29                  <sup>8</sup> This number is the aggregate of the number of parents whose negative CFI/RFI determinations  
30                  were reconsidered, number of parents whose negative CFI/RFI determination was unchanged, and  
31                  individuals who were referred to 240 proceedings without interview because of a rare language.

1	• Number of parents determined to establish CF or RF upon review by USCIS	<b>66<sup>9</sup></b>
2	• Number of parents whose CF or RF finding remains negative upon review by USCIS	<b>0</b>
3	Total number of CFI decisions issued for children by USCIS	<b>73<sup>10</sup></b>
4	• Number of children determined to establish CF by USCIS	<b>73<sup>11</sup></b>
5	• Number of children determined not to establish CF by USCIS	<b>0</b>
6	<b>Removals</b>	
7	Number of class members who have been returned to their country of origin as a result of waiving the settlement procedures	<b>99 Parents<sup>12</sup></b>

19 This number excludes 12 cases where a parent already had an NTA from ICE or was already ordered removed by an IJ (which are included in the interview totals).

20 <sup>9</sup> This number includes parents who received positive CF/RF determinations upon reconsideration, parents who received a Notice to Appear based on their child's positive CF determination, and parents who were placed in Section 240 proceedings due to a rare language.

21 <sup>10</sup> This number is the aggregate of the number of children who received a positive CF determination, the number of children who received a negative CF determination, and children who were referred to 240 proceedings without interview because of a rare language.

22 <sup>11</sup> This number includes children who received a positive CF determination, children who received a Notice to Appear as a dependent on their parent's positive CF determination, and children who were placed in Section 240 proceedings due to a rare language.

23 <sup>12</sup> This number is as of March 23, 2019.

1                   **D. March 8, 2019 Order Regarding Class Definition**

2

3                   On March 19, 2019, the parties met and conferred regarding the Court's  
4 March 8, 2019 order expanding the class definition in this case. In that call, Plaintiffs  
5 requested that Defendants provide an accounting of the members of the expanded  
6 class along with any known contact information for class members. Also during that  
7 call, Plaintiffs agreed, in response to a request from Defendants, that Plaintiffs will  
8 inform Defendants right away if Plaintiffs become aware of any members of the  
9 expanded class who has no contact with their separated child. Plaintiffs stated that  
10 they are not aware of any parent in this situation.

13                  Both in advance of that call, and in response to the parties' discussions,  
14 Defendants have continued to discuss internally the best way to most quickly and  
15 efficiently identify members of the expanded class. Defendants intend to hold  
16 another call with Plaintiffs on this issue next week, and Defendants ask that the Court  
17 allow the parties to continue to meet and confer on this issue, as well as the question  
18 of what, if any, relief should be provided to this expanded class and/or whether  
19 briefing is necessary to resolve this issue. Defendants propose that they will submit  
20 a proposal to the Court with regard to next steps on or before April 5, 2019.  
21  
22

24                  **E. Pending Motion Regarding Released Settlement Class Members**

25

26                  Defendants provided Plaintiffs with the requested list of individuals who  
27 potentially had final orders of expedited removal on February 28, 2019. Plaintiffs  
28

1 sent a follow-up inquiry regarding this list of individuals on March 23, 2019, and the  
2 parties met and conferred by phone on March 27, 2019. The parties will continue to  
3 meet and confer on this issue in the hopes that it can be resolved without further  
4 involvement of the Court.  
5

6 **F. Children Awaiting Placement.**

7 On February 12, 2019, Plaintiffs provided Defendants a list of 22 children  
8 who Plaintiffs believed were awaiting placement with a sponsor after their parent  
9 waived reunification. On February 16, 2019, Defendants provided Plaintiffs with  
10 information about each of these 22 children. Plaintiffs have not submitted any  
11 follow-up requests with regard to these children.  
12  
13

14 **G. Government Processes, Procedures, and Tracking, for Separations Since  
15 June 26, 2018.**

16 *1. Data Requested by Plaintiffs*

17 Defendants have provided Plaintiffs with a report containing information  
18 regarding parents and children separated since the Court's June 26, 2018  
19 preliminary-injunction order. Defendants intend to provide another update to  
20 Plaintiffs by Friday April 5, 2019.  
21  
22

23 *2. Processes and Procedures*

24 Defendants have provided a summary outline memorializing the processes,  
25 procedures, tracking, and communication between the agencies that have been  
26 adopted by the agencies since June 26, 2018. The outline also included an overview  
27  
28

1 of the options for separated parents and children to obtain information about  
2 reunification options. Defendants also have reached out to representatives for the  
3 Bureau of Prisons and the U.S. Marshals Service to ensure that those entities are  
4 included in discussions regarding these processes and procedures.  
5

6 On March 4, 2019, Plaintiffs and lawyers for the children's legal service  
7 providers sent comments and questions in response to the government's proposals.  
8 Defendants are reviewing those comments and questions, and will provide further  
9 information to Plaintiffs and the legal service providers soon in response to their  
10 inquiries. Defendants will also provide the Court with an update in the next joint  
11 status report.  
12

14 **H. Additional Information Requests.**

15 Plaintiffs have submitted numerous additional requests for information related  
16 to various individual class members. Defendants have been working with Plaintiffs  
17 to provide the requested information.  
18

19 **II. MS. L. PLAINTIFFS' POSITION**

21 **1. Relief For Expanded Class Pursuant to This Court's March 8 Order.**

22 Plaintiffs' aim is to ensure that every separated family has the opportunity to  
23 reunite. At this stage, Plaintiffs request that the government identify the families  
24 whom it separated on or after July 1, 2017 whose children were released from  
25 ORR before June 26, 2018. The government must provide this list to class  
26 counsel, along with information in the agencies' possession as to the parent and  
27  
28

1 child's location and contact information. Once Plaintiffs are in possession of this  
2 information, they will work with advocacy partners to create a steering  
3 committee—similar to the Deported Parents Steering Committee—that can use the  
4 information to locate, communicate with, and counsel the families regarding their  
5 reunification options. Plaintiffs are willing to work with the Court and Defendants  
6 to develop ultimate timelines to identify Class members but believe the  
7 government must start the process immediately given how long these children were  
8 separated.

9       The parties met and conferred on March 19, 2019, and Plaintiffs informed  
10 Defendants of this position.

11      **2. Centralized Database and Procedures and Standards to Govern Further  
Separations**

12       The parties are meeting and conferring on how to address the continuing  
13 separations. Plaintiffs have sent the government initial responses to the outline  
14 included in the February 20 JSR.

15      **3. Information Regarding Parents Separated from Children After June 26**

16       Plaintiffs have requested additional information and clarification from the  
17 government regarding the bases for the post-June 26 separations. These requests  
18 include that the government identify the criminal history it relied upon for some  
19 parents; that the government provide further details of the criminal history it  
20 identified for other parents; and that the government elaborate on separations  
21 explained only as being for “other” reasons. The parties are meeting and conferring  
22 on this issue.

23      **4. Steering Committee Progress**

24       The Steering Committee has successfully contacted and confirmed the  
25 preferences of nearly all removed parents with respect to reunifications. On March  
26 8, the government reported that, as of March 4, 39 children with removed parents  
27

28

1 remained in ORR custody.<sup>13</sup> The Committee has delivered preferences for the  
 2 parents of 36 of those children, and those children are awaiting placement with  
 3 sponsors in accordance with their parents' submitted preferences. The  
 4 circumstances for the remaining three children are as follows: (i) one child's parent  
 5 is seeking to return to the United States under the Settlement Agreement, and (ii)  
 6 the Steering Committee has advised the government that no parental preference  
 7 will be forthcoming from the parents of the other two children due to complex and  
 8 individualized family circumstances.

9 The status of efforts based on the government's March 4 list of 39 children  
 10 in ORR custody with removed parents appears in the table immediately below.

11	Removed parents identified by the government to the Steering	39
12	Committee as of 3/4/2019	
13		
14	Parent's final preference has been communicated to the government	36 <sup>14</sup>
15	• Parent has elected reunification in Country of Origin	0
16	• Parent has elected to waive reunification in Country of Origin	36
17	Total number of cases that the Steering Committee has indicated to	2
18	the government should be set aside	
19	• No parental preference will be forthcoming due to complex and	
20	individualized family circumstances	2
21		
22	Total number of cases where the parent seeks to return to the U.S.	1
23		

24 <sup>13</sup> As discussed at the October 25 Status Conference, in this Joint Status Report  
 25 Plaintiffs are reporting a set of detailed numbers based only on the government's  
 26 most recent list of children in ORR custody with removed parents.

27 <sup>14</sup> The Steering Committee determined that for one child it was  
 appropriate to report the preference of a non-removed parent because the Steering  
 Committee was unable to reach the removed parent.

28

1 under the Settlement Agreement and has thus not yet made an  
2 election

3 **E. Children Whose Parents Have Submitted Preferences and Are Still Detained**

4  
5 On February 12, the Steering Committee provided to the government  
6 information regarding 22 children who had been in ORR custody for at least five  
7 months following the submission of a final reunification election. The government  
8 provided detailed information regarding these children on February 16, which the  
9 Steering Committee appreciates. According to the government's March 4 data, 12  
10 of these 22 children had then been discharged to a sponsor. The Steering  
11 Committee will continue to meet and confer with the Government regarding the  
12 remaining children.

13  
14 **III. *MMM* Plaintiffs' Position**

15  
16 As reported in the prior JSR, and per the Court's February 22, 2019 Order  
17 (ECF No. 362), the Government provided *Dora* and *M.M.M.* counsel with a list of  
18 class members with removal orders, which includes individuals with either  
19 expedited removal orders or final removal orders. Plaintiffs' counsel have examined  
20 the list to determine how many of the individuals on the list have provided signed  
21 settlement forms, and have reached the preliminary conclusion (subject to further  
22 meet and confer with the Government) that less than 25% of the individuals on the  
23 list have submitted forms. Plaintiffs' counsel have also done preliminary research  
24 to determine whether any of the individuals on the list are currently in removal  
25  
26  
27  
28

1 proceedings. The parties met and conferred on this issue today (March 27), and plan  
2 to continue to exchange information and discuss appropriate next steps, including  
3 the best way to identify class members who may be in need of settlement relief.  
4

5 The parties have also agreed to a proposed amendment to the Court's  
6 protective order in Ms. L to clarify and confirm that protected information can be  
7 used for purposes of settlement implementation, which will be important as  
8 Plaintiff's counsel continue outreach to settlement class members. A joint motion  
9 will be filed shortly.  
10

12 In addition, the parties continue to work together to implement the settlement  
13 agreement approved on November 15, 2018. Counsel for Plaintiffs are providing  
14 the government with signed waiver forms as they are received from class members  
15 (detained and released). The parties are meeting and conferring on settlement  
16 implementation issues as they arise, and are working together to resolve (among  
17 other issues) the discrepancy between the number of waiver forms submitted by class  
18 counsel and the number of forms reported by the Government. The parties will alert  
19 the Court of any issues that require the Court's guidance.  
20  
21

24 DATED: March 27, 2019

Respectfully submitted,

25 /s/ Lee Gelernt  
26 Lee Gelernt\*  
27 Judy Rabinovitz\*

1 Anand Balakrishnan\*  
2 AMERICAN CIVIL LIBERTIES UNION  
3 FOUNDATION  
4 125 Broad St., 18th Floor  
5 New York, NY 10004  
6 T: (212) 549-2660  
7 F: (212) 549-2654  
*lgelernt@aclu.org*  
*jrabinovitz@aclu.org*  
*abalakrishnan@aclu.org*

8 Bardis Vakili (SBN 247783)  
9 ACLU FOUNDATION OF SAN DIEGO  
10 & IMPERIAL COUNTIES  
11 P.O. Box 87131  
12 San Diego, CA 92138-7131  
13 T: (619) 398-4485  
F: (619) 232-0036  
*bvakili@aclusandiego.org*

14 Stephen B. Kang (SBN 292280)  
15 Spencer E. Amdur (SBN 320069)  
16 AMERICAN CIVIL LIBERTIES UNION  
17 FOUNDATION  
18 39 Drumm Street  
19 San Francisco, CA 94111  
T: (415) 343-1198  
F: (415) 395-0950  
*skang@aclu.org*  
*samdur@aclu.org*

21 *Attorneys for Petitioners-Plaintiffs*  
22 \*Admitted Pro Hac Vice

23  
24 JOSEPH H. HUNT  
25 Assistant Attorney General  
26 SCOTT G. STEWART  
27 Deputy Assistant Attorney General  
28 WILLIAM C. PEACHEY

1 Director  
2 WILLIAM C. SILVIS  
3 Assistant Director

4 /s/ Sarah B. Fabian  
5 SARAH B. FABIAN  
6 Senior Litigation Counsel  
7 NICOLE MURLEY  
8 Trial Attorney  
9 Office of Immigration Litigation  
10 Civil Division  
11 U.S. Department of Justice  
12 P.O. Box 868, Ben Franklin Station  
13 Washington, DC 20044  
14 (202) 532-4824  
15 (202) 616-8962 (facsimile)  
16 sarah.b.fabian@usdoj.gov

17 ADAM L. BRAVERMAN  
18 United States Attorney  
19 SAMUEL W. BETTWY  
20 Assistant U.S. Attorney

21 *Attorneys for Respondents-Defendants*

22  
23  
24  
25  
26  
27  
28